

**Statement of Secretary David B. Mitchell, J.D.
Delaware Department of Safety and Homeland Security**

Submitted for the Record

**Hearing on Protecting the Homeland:
Fighting Pandemic Flu from the Front Lines**

**U.S. House of Representatives Committee on Homeland Security
Subcommittee on Prevention of Nuclear and Biological Attack
Subcommittee on Emergency Preparedness, Science, and Technology**

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INTRODUCTION

Good afternoon, Chairman King and members of the Subcommittees. I am David B. Mitchell, Secretary of the Delaware Department of Safety and Homeland Security. On behalf of Governor Ruth Ann Minner, I am honored to be here today to address the important issue of homeland security as it relates to pandemic influenza. I would like to thank you for your support of the many initiatives now in place that have enhanced homeland security and emergency preparedness at the federal and state level.

The most recent concern of avian influenza mutating into a form that leads to a human pandemic is a topic not unfamiliar to Delaware, since we are a leading poultry producing state. I would like to open my statement today with an explanation of Delaware's experiences with avian influenza prevention and response in our animal or poultry population. I will then move on to discuss with you our response to human pandemic influenza and how we can enhance our federal-state partnership and allocate resources wisely.

Each year, Delaware poultry growers produce approximately 240 million chickens. Tyson Foods, Inc., Perdue Farms, Inc., Mountaire Farms, Inc., and Allen Family Foods are the major poultry companies with growers or facilities in Delaware. However, there are also numerous other smaller commercial and non-commercial poultry producers in Delaware. On any given day, there are approximately 110 million chickens on the Delmarva Peninsula. As one of the largest poultry producing states in the nation, the risk of exposure to avian influenza within the poultry industry is high. Of even greater significance is the risk of exposure within the human population of an influenza pandemic. The avian influenza virus presents two potential crises with serious consequences to the State of Delaware. First, an outbreak of the avian influenza virus within the State's poultry population may have a severe negative impact on Delaware's economy. Secondly, and of greater significance, is the possibility of an influenza pandemic which would have grave consequences for the public health in Delaware.

In recognition of its unique situation, the Delaware Department of Safety and Homeland Security (DSHS) and its Divisions, Delaware Emergency Management Agency (DEMA) and the Delaware State Police (DSP), have succeeded in creating close partnerships and working relationships with the Delaware Department of Agriculture (DDA), the Department of Health and Social Services and its division, the Division of Public Health (DPH), local law enforcement,

the Delaware National Guard and the Dover Air Force Base in an effort to develop a seamless preparedness and emergency response plan.

AVIAN INFLUENZA – IMPACT ON DELAWARE’S POULTRY INDUSTRY

In February 2004, the DDA and several Delaware agencies joined forces to contain a low pathogenic avian flu virus identified in flocks at two Sussex County farms. At the time of the initial outbreak, the DSHS, through its Division, DEMA, already had in place the Delaware Emergency Operations Plan (DEOP) for emergencies arising from natural or human-made disasters. The DDA immediately implemented its emergency support functions under the DEOP and another division of DSHS, the Delaware State Police, came in to support the DDA in its efforts to contain the avian flu virus. Further, the Delmarva Poultry Industry Inc. (DPI), a nonprofit industry association, had already created an emergency disease task force in response to an avian influenza outbreak that occurred in the early 1980s in Lancaster, Pennsylvania. A Memorandum of Understanding creating a partnership between the DDA, DPI and other states within the Delmarva Peninsula enabled the DDA to also convene the DPI’s Emergency Disease Task Force. Because the outbreak did not involve a bird-to-human or human-to-human transmission, DDA acted as the managing agency. The Delaware State Police, in conjunction with local private security officers, was immediately mobilized to assist the DDA in setting up a quarantine of the infected farms, setting up a barrier to prevent reporters and other curiosity seekers from trespassing onto the farm, and providing lines of communications between the DDA, the press and the public about the status of the crisis.

Despite the quarantine order and admonitions by the DDA and the Delaware State Police that it was necessary to stay away from the infected farms to prevent spread of the virus, reporters attempted to enter the quarantined area through any means available. Some flew helicopters to gain access to the farms; others trespassed at night with night vision equipment to photograph poultry, houses and growers. Through coordination between DSHS, DDA and DPI, efficient implementation of the DEOP, and effective communications between DDA, the Delaware State Police, DPI and the public, Delaware successfully quarantined the two farms and contained the virus.

Delaware’s success in containing the virus in 2004 has earned it national attention as a leader in how to respond to avian influenza as it pertains to poultry. Under the DDA’s poultry regulations, all commercial or non-commercial premises where live poultry is kept must be registered with geo-referenced coordinates of all chicken coops. Vehicles, crates, coops and footwear used for sale or transfer of poultry out of state must be in a completely clean condition prior to leaving or returning to Delaware and is subject to inspection. The DDA requires all poultry growers to maintain detailed records of their poultry.

Producers are required to participate in several testing programs to ensure their flocks are free from any potentially hazardous forms of avian influenza. Thanks to a partnership between the DDA and the University of Delaware, the DDA is able to conduct onsite testing of every flock and receive test results within 3 to 4 hours. At present, the test can quickly identify the potential harmful “H” factor of the avian flu, but additional testing must be conducted in order to identify the “N” factor. Any flock found to have avian influenza is immediately depopulated and disposed of onsite in an environmentally acceptable manner and the coops disinfected for reuse.

Delaware is one of five states to implement an Indemnity Program which utilizes state and federal funds to reimburse poultry producers for flocks lost due to depopulation by DDA.

This permits the State of Delaware to immediately respond to the threat of the spread of an avian flu virus without delays and, as an additional benefit, encourages poultry growers to report an infected flock in a timely manner. The continued success of its program is dependent upon efficient recognition and reporting of an emergency poultry disease. Because Delaware is one of the largest poultry producing states in the nation, continued funding from the federal government is necessary to ensure that Delaware can continue its research to completely and expeditiously identify a highly pathogenic avian flu virus with the potential to mutate to a form adaptable for human to human transmission. Further, federal funding is also necessary to ensure the viability of Delaware's Indemnity program. From a homeland security perspective, fighting the pandemic influenza from the frontlines includes, in large part, preventing the spread of avian influenza through the development of strict regulations, rigorous testing and an effective emergency response plan as it pertains to Delaware's poultry industry.

PANDEMIC INFLUENZA – FIGHTING FROM A HOMELAND SECURITY PERSPECTIVE

The U.S. Department of Health and Human Services' (HHS) Pandemic Influenza Plan recognizes the important role that Homeland Security and state and local law enforcement agencies have in the overall success of the plan and offers detailed guidance to local law enforcement regarding their involvement in the execution of their state and local pandemic influenza plans.

In September 2005, with the guidance of the HHS Pandemic Influenza Plan, Delaware completed its Pandemic Influenza Plan. In recognition of the important role of the Department of Safety and Homeland Security and State and local law enforcement play in a pandemic influenza situation, DSHS and state and local law enforcement agencies, with the Delaware National Guard, DEMA and other state agencies have conducted extensive drills, table top exercises and incident command training geared towards early, quick and effective response to a pandemic influenza event and allocation of resources in the most effective and efficient manner.

In November 2005, more than 100 participants gathered to take part in a Pandemic Influenza Table Top Exercise tackling tough issues like isolation and quarantine, continuity of essential services and businesses, medical surge capacity, infrastructure security, mass fatality and public education. The exercise was a great opportunity for Delaware's agencies to coordinate their individual roles, exchange information and concerns, network and review emergency plans. Delaware will hold its Pandemic Influenza Summit on February 21, 2006 with Governor Ruth Ann Minner and other local and federal representatives, including keynote speaker U.S. Surgeon General Richard Carmona. The Summit will give Delaware the opportunity to discuss Delaware's Pandemic Influenza Plan and to exchange information with its federal partners to ensure the continued development of a seamless, flexible and practical preparedness and emergency response plan.

A. The Emergency Health Powers Act

The Department of Safety and Homeland Security, Delaware State Police, DEMA, Division of Public Health, Delaware National Guard, and the Dover Air Force Base are actively working together to develop an effective quarantine and isolation plan. One of Delaware's accomplishments has been the enactment of the Emergency Health Powers Act, which gives the

Division of Public Health and the Department of Safety and Homeland Security the authority to obtain quarantine or isolation directives and orders in an expedited manner during an influenza pandemic. Prior to a Declaration of a State of Emergency by Governor Ruth Ann Minner, the Public Health Authority under DPH may obtain a quarantine or isolation order if it has been established that a person or persons pose a significant risk of transmitting a disease to others with serious consequences. Once a State of Emergency has been declared, the Public Safety Authority under DSHS has the authority to obtain quarantine and isolation orders. Both the Public Health Authority and the Public Safety Authority have the ability to request that an order be granted on an *ex parte* basis and both have the authority to issue directives permitting state and local law enforcement to detain the person or persons pending the issuance of an isolation or quarantine order. Further, the Emergency Health Powers Act contain important provisions protecting the due process rights of individuals who are subject to a quarantine or isolation order, such as ensuring that persons quarantined or isolated under an *ex parte* order receive a hearing within 72 hours.

Currently, the Delaware Department of Safety and Homeland Security and Division of Public Health are working with Delaware's state courts to create form petitions for *ex parte* quarantine and isolation orders to help expedite the process of obtaining orders under which law enforcement can legally act. The goal is to create petitions easily recognizable to a judge or clerk of the court as urgent. Furthermore, both agencies are working with the courts to establish a judge-on-call who can act as the primary responder to an emergency petition to quarantine or isolate as well as a set policy and procedure for responding to an influenza pandemic.

Although the judges in Delaware are not considered first responders, they play an important role in determining what legal authority law enforcement has to enforce a quarantine or isolation order and to the extent of that legal authority. It is further expected that judges will continue to play a role during a pandemic as they will be asked to issue other orders, such as orders of contempt against those persons who violate the quarantine or isolation orders or to determine law enforcement's authority to, for instance, restrict travel across State borders. Currently, efforts are being made to protect judges from being exposed to the virus when they are called upon to preside over hearings related to quarantine and isolation orders. For example, Delaware is looking at the possibility of conducting hearings from a remote location through videoconferencing or providing judges with protective gear when conducting such hearings.

B. The Delaware Emergency Operations Plan and Pandemic Influenza Plan

The Incident Command System has been incorporated into the Delaware Emergency Operations Plan. The Department of Safety and Homeland Security and the Delaware State Police are the primary agencies in command of security and law enforcement and in charge of communications when there has been a declaration of a state of emergency. Delaware's Pandemic Influenza Plan, issued in September 2005, also provides that the Delaware State Police shall act as a supporting agency in the way of crowd control, traffic control for vaccination clinics, enforcement of quarantine and isolation orders and directives, and transportation of shipments of vaccines to designated receiving sites. Until there has been a declaration of a State of Emergency, the Delaware State Police shall only act as a supporting agency to the local jurisdiction in which a quarantine or isolation order has been issued by the Division of Public Health. The Delaware State Police will only assist when help is requested by that local

jurisdiction. DSHS, the Delaware State Police and local law enforcement also have the ability to enter into mutual aid agreements if the emergency escalates.

1. The Intrastate Mutual Aid Compact

As part of Delaware's incident command training and its efforts to minimize local jurisdictional lines during an emergency, Delaware recently enacted the Intrastate Mutual Aid Compact which creates a system of intrastate mutual aid between participating political subdivisions and fire, rescue and emergency medical service provider organizations in Delaware. The Compact provides for mutual assistance in the prevention of, response to, and recovery from, any disaster that results in a formal state of emergency in a participating political subdivision. The Compact has also created a committee to review the progress and status of statewide mutual aid, assist in developing methods to track and evaluate activation of the system and to examine issues facing participating political subdivisions and fire, rescue, and emergency medical service provider organizations regarding implementation.

From a homeland security perspective, the Intrastate Mutual Aid Compact permits state and local law enforcement to cross in-state jurisdictional lines to provide or receive aid from neighboring local jurisdictions and promotes integration and intra-operability between state and local law enforcement resources as a cohesive and fluid process.

Once there has been a declaration of a State of Emergency, the Delaware State Police creates a task force comprised of representatives from each of the local law enforcement agencies, which then convenes to coordinate emergency law enforcement response, allocation of resources, communications and assignments of personnel. It is imperative that intra-operability, information gathering, analysis and dissemination between agencies and the public be transparent, fluid and efficient. Delaware recognizes that intra-operability between first responders and other necessary emergency personnel is key to the success of any emergency preparedness plan. Federal funds are always necessary to assist Delaware in acquiring and maintaining state-of-the-art technology which would promote continuity of operations during an emergency involving the containment of a lethal virus or disease.

STATE ALLOCATION OF FEDERAL RESOURCES

Federal funding and resources have supported many of Delaware's main homeland security objectives including effective communication between first responders, information gathering, analysis and dissemination, intra-operability between local jurisdictions, agencies and the business and private sector, and public education and awareness. Funding received from the federal government has also enabled the Department of Safety and Homeland Security to make significant strides in the development of an "all hazards" approach to our preparedness and emergency response plans. Funding at the federal level is necessary to ensure that Delaware can continue to develop plans which are flexible enough to adapt to different types of emergencies, yet specific enough to effectively and efficiently respond to those emergencies. Finally, fighting the pandemic influenza from the frontlines means maintaining a strong focus on prevention and response. Delaware must place its efforts in preventing the virus from entering its State borders and on ensuring success in the execution of an immediate, effective and proficient emergency response plan.

DSHS understands the importance of being able to equip Delaware's first responders and state and local law enforcement with the tools necessary to successfully fight an influenza pandemic from the frontlines. A substantial amount of federal funds Delaware has received has been allocated to the purchase of decontamination equipment, protective suits and masks, communications equipment, all terrain vehicles for rescue and recovery in extremely rough terrain, chemical detection kits, security cameras and night vision equipment. State and local law enforcement agencies are working with the Delaware Division of Public Health to ensure that they, as first responders, and their families receive antiviral vaccinations that should offer protection against the virus. Further, the DSHS, in conjunction with DEMA and the Delaware State Police are designated as the primary agencies for keeping the lines of communication open between agencies and the public and disseminating accurate information to the agencies and the public as a pandemic unfolds.

The Department of Safety and Homeland Security is using state of the art telecommunications technology to create a 24 hour, 7 day a week, center from which information and intelligence data may be received, analyzed, processed, and disseminated to the private and public sector in a consistent and reliable manner. The Delaware Information Analysis Center (DIAC) will be key in maintaining open lines of communication between state and local law enforcement and other first responders. It will also serve to expand DSP's intelligence capabilities allowing a host of law enforcement agencies including the FBI, State and local police to share information regarding possible terrorist and bioterrorist threats. As part of the DIAC, DSHS is developing a geographical information system (GIS) and looking at the option of installing global positioning system (GPS) and automatic vehicle locator (AVL) devices in all modes of transportation used by first responders.

As a result of federal funding, Delaware has been able to enhance its 800 MHz Digital Trunked Radio System to improve intra-operability for all state, county and local government agencies, fire, police and emergency medical services and to improve communications within buildings through the use of vehicular repeater systems. Currently, there are over 40 different agencies on the system, using approximately 12,000 mobile and portable radios and making over 115,000 calls on a typical day. The 800 MHz System also provides interoperability in the jurisdictions surrounding Delaware that have systems which are compatible with Delaware's system. Delaware's goal is to enhance the system to resolve current system deficiencies. This \$52 million project will provide in-building coverage throughout the State, through the use of tower sites, bi-directional amplifiers, and vehicular repeater systems. It will also expand the number of dispatch consoles from 54 to 123 while standardizing and improving redundancy within and between all 911 Centers, upgrade the radio systems platform to extend its lifecycle, enhance intra-operability with agencies that are not on the 800 MHz system today, such as Public Works, and enhance interoperability with jurisdictions surrounding the State who use systems which are not compatible with Delaware's system. The State would like to also expand the microwave network that connects the radio system so that it can support the traffic and reliability needs for other telecommunications services requirements in the state. While the \$52 million allocated for this project will help to upgrade systems currently being used by Delaware for emergency response, additional federal funding over the next 5 to 7 years will be necessary to meet the prevention and emergency response needs of Delaware as it strives to keep pace with ever evolving technology.

Delaware has also been involved in other projects to enhance the state's ability to stay informed of events as they unfold throughout the state and to allocate resources where they are

most needed. Recently, Delaware State Police and Kent County Emergency Services purchased new high-tech Mobile Command Centers which have been fully customized with state of the art technology and telecommunications to assist those who need help as quickly as possible at the scene of an emergency. Additionally, the Delaware State Police enhanced their medical transport service with the purchase of new aircraft to provide 24-hour, 7-day a week emergency helicopter transport statewide.

Educating the public prior to the onset of this crisis is crucial. The Department of Safety and Homeland Security is providing an all hazards personal preparedness message to Delawareans by promoting the U.S. Homeland Security Ready campaign. Residents are encouraged to create a plan, make a kit and know potential threats. DEMA also provides personal preparedness training in communities statewide through its Citizen Corps program. Delaware has earmarked the Phase 1 Federal Pandemic Influenza funds it has received for public education. The Division of Public Health has implemented a public outreach program to educate Delawareans about pandemic influenza and personal preparedness. One component of the program is a series of public informational meetings hosted in communities throughout the state. Public Health officials will also provide citizens with information on assembling a personal emergency kit with the essential items including health supplies, food and water. Brochures have been created for the special needs population in Delaware on how to prepare for and respond to general emergencies. The brochure advises people with disabilities and other special needs to maintain a contact list of medical suppliers, pharmacies, doctors, family members and friends they can rely on during an emergency. It also provides information on how to create an emergency preparedness kit.

ENHANCING THE FEDERAL-STATE PARTNERSHIP

Delaware will continue to look to the federal government for guidance and support during the development of its plans to manage an influenza pandemic. It is important that our federal partners continue to hold public meetings and summits to keep the lines of communication open. Public meetings are needed in each state to share information with local residents. Delaware looks forward to a federal partnership to highlight best practices. It is vital that we learn from each other. Sharing expertise and lessons learned can save states valuable time and money. Delaware also needs federal funding to implement these best practices, which may include the purchase of state-of-the-art equipment and technology or the institution of innovative programs designed to prepare its agencies, the private and business sector and its citizens for a worst case emergency scenario. Fiscal restraints should not interfere with the States ability to take appropriate safety measures to protect its citizenry. In the face of the varying messages from different facets of the media, federal funding and support continue to be necessary to increase Delaware's ability to gather accurate information and disseminate that information to the public. Our citizens rely on state officials to provide them with timely accurate information. Providing funds to develop the Delaware Information Analysis Center and 800 MHz System will promote accurate dissemination of information to the public and enhance rumor control. Finally, support from our federal partners should come in the form of ongoing joint summits and federal and state exercises and drills. Exercises help states form invaluable relationships with state and federal contacts important in emergencies. Experiences gained during drills and exercises will prove beneficial in the event of emergency.

The success of the Delaware Pandemic Influenza Plan, and any other pandemic influenza plan, depends on the cooperation and coordination between law enforcement and other agencies on the national, state, and local level. Effective forms of communication and accurate dissemination of information as the pandemic progresses will lessen the chance of overstating or understating the risks inherent in this type of a crisis. One thing is for certain: we must stay ahead of the H5N1 avian flu virus. Constant preparation, planning, testing, and development of Delaware's Emergency Operating Plan and Pandemic Influenza Plan will result in an effective and meaningful preparedness and emergency response plan to the pandemic flu.